No. 102

In the Supreme Court of the United States

OCTOBER TERM, 1960

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC and MILAN STOJIC, and also BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, PETITIONERS,

v.

STATE OF OREGON, acting by and through the State Land Board

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC, MURTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and RAJKA ZEKIC and BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, PETITIONERS,

v.

STATE OF OREGON, acting by and through the State Land Board

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

J. LEE RANKIN,
Solicitor General,

GEORGE COCHRAN DOUB,
Assistant Attorney General,

ALAN S. ROSENTHAL,
Attorney,
Department of Justice,
Washington 25, D. C.

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OPINIONS BELOW

The Circuit Court of the State of Oregon for the County of Multnomah rendered no opinion. Its orders denying the petitions of the State of Oregon for the escheat of the property involved and directing that distribution be made (Pet. App. C, pp. 33a-38a) are

not reported. The opinion of the Supreme Court of the State of Oregon (Pet. App. A, pp. 1a-26a) is reported at 349 P. 2d 255.

JURISDICTION

The judgments of the Supreme Court of the State of Oregon were entered on January 13, 1960. A timely motion for a rehearing was filed by petitioners on February 26, 1960, and was denied on March 1, 1960. The petition for a writ of certiorari was filed on May 26, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

1. Whether, under the terms of Article II of the Convention Between The United States of America and Serbia, For Facilitating And Developing Commercial Relations, of 1881, now in force between the United States and Yugoslavia, a citizen of one of the contracting parties, domiciled in the country of his citizenship, has the right to acquire by inheritance property within the other country.

2. Whether the foreign exchange laws of Yugoslavia would preclude an American citizen domiciled in the United States from obtaining the benefit of inherited property located in Yugoslavia.

STATUTES AND TREATIES INVOLVED

The relevant provisions of the Oregon Revised Statutes, the Yugoslav Laws Regulating Payment Transactions with Foreign Countries, the Treaty Between the United States of America and Serbia, For Facilitating and Developing Commercial Rela-

tions of October 2/14, 1881, and the Articles of Agreement of the International Monetary Fund of December 27, 1945, are set forth in Appendix A, *infra*, pp. 16-21.

STATEMENT

Joe Stoich and Murharem Zekich died intestate in Oregon in December 1953, leaving certain heirs and next-of-kin domiciled in Yugoslavia who, along with the Consul General of Yugoslavia, are the petitioners in this Court. Acting by virtue of Section 111.070 of the Oregon Revised Statutes, *infra*, pp. 16-17, the State of Oregon filed petitions in the Circuit Court of Oregon for the County of Multnomah for the escheat of the estate. The basis of the claim of escheat was that petitioners had no right in the respective estates and that there were no other heirs.

The Circuit Court, holding that the burden of proving the presence of reciprocity required by the Oregon statute had been met, issued orders denying the petitions of the State and directed that distribution be made. (Pet. App. C, pp. 33a-38a). The Supreme Court of Oregon reversed and ordered the escheat of both estates. (Pet. App. A, pp. 1a-26a; Pet. App. B, pp. 27a-32a). It held (1) that Article II of the Convention Between the United States and Serbia, For Facilitating and Developing Commercial Relations, of 1881, 22 Stat. 963, *infra*, pp. 17-19, now in force between the United States and Yugoslavia, does not apply to the estate of a United States citizen who dies intestate in the United States leaving heirs or next-of-kin who are Yugoslav subjects residing in Yugoslavia; and (2) that, regardless of the adherence

of the United States and Yugoslavia to the Articles of Agreement of the International Monetary Fund, 60 Stat. 1401, T.I.A.S. 1501, *infra*, pp. 19-21, the foreign exchange controls existing in Yugoslavia as of the date of the decedents' deaths prevented petitioners from meeting the burden of showing the right of an American citizen to receive payment in money from a Yugoslav estate. (Pet. A, pp. 20a-26a).

INTEREST OF THE UNITED STATES

The decision of the Supreme Court of Oregon is in direct conflict with the construction which has been consistently placed upon the Convention Between the United States of America and Serbia, For Facilitating And Developing Commercial Relations, of 1881, by the Department of State and the Yugoslav Government. It is in the interest of the United States that the construction agreed upon by both contracting parties be maintained.[1] Further, there are numerous similar treaties existing between the United States and other countries.

REASONS FOR GRANTING THE WRIT

Under Oregon law, petitioners concededly are entitled to the decedents' estates here involved if, under Yugoslav law, an American citizen domiciled in the United States is entitled (1) to inherit from a Yugoslav domiciliary, and (2) to obtain the benefits of the property thus inherited. Oregon Revised

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[1] The Yugoslav Government has called the attention of the State Department to the decision of the court below (see App. B, *infra*, pp. 40-42).

Statutes, Section 111.070, *infra*, pp. 16-17. In holding that the requisite reciprocity does not exist, the Oregon Supreme Court has read Article II of the Convention of 1881 between the United States and Yugoslavia, *infra*, pp. 18-19, as not conferring rights of inheritance where a citizen of one country dies leaving next-of-kin who are citizens of, and domiciled in, the other country. As an alternative ground for directing an escheat of the estates to Oregon, the court below determined that monetary controls provided by Yugoslav law would preclude an American citizen from receiving the assets of the estate of a Yugoslav decedent.

Both of these holdings are erroneous. The Convention of 1881 provides reciprocal rights of acquisition and disposal by inheritance in the circumstances of this case and has consistently been so interpreted by both Governments. And the existing Yugoslav monetary controls relied upon by the court below are subject to the provisions of both the Convention of 1881 and the Articles of Agreement of the International Monetary Fund (the Bretton Woods Agreement), *infra*, pp. 19-21. Thus, these controls would not interfere with an American citizen's acquisition of the assets of a Yugoslav decedent's estate.

Further, the questions are of recurring importance and there is a conflict of decisions. A number of other states have reciprocity requirements substantially identical to those imposed by the Oregon statute. In connection with the application of the Montana statute, the Supreme Court of that state has held that the Convention of 1881 applies in this situation.

The United States has also entered into treaties with several other countries which contain provisions similar to those of the 1881 Convention.

1. Article II of the Convention of 1881, *infra*, pp. 18-19, provides in relevant part that "[i]n all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant * * * in each of these states to the subjects of the most favored nation." The Oregon Supreme Court took the phrases "in Serbia" and "in the United States" as modifying "citizens of the United States" and "Serbian subjects" respectively. This reading led the court to its conclusion that the Convention confers no rights of inheritance upon an American citizen or Yugoslav subject domiciled (as are petitioners here) in the country of his citizenship.

The State Department and the Yugoslav Government have consistently rejected this construction of the Convention. As is reflected by the correspondence between the two Governments, it is their understanding that the critical phrases were not intended to place a residence requirement upon the rights of inheritance granted by the Convention. See App. B, *infra*, pp. 22*ff*, especially 28-31. Rather, the phrases modify "shall enjoy." In other words, an American citizen—irrespective of domicile—shall enjoy in Serbia (*i.e.* Yugoslavia) the same rights of inheritance as are conferred by the latter country upon the citizens of the "most favored nation" (and vice versa). And, in light of the treaties which the United States has

entered into with Argentina, France and Switzerland,[2] and the treaties between Yugoslavia and Poland and Czechoslavakia,[3] the effect of the "most favored nation" clause is to grant the American citizen and the Yugoslav subject the same rights of inheritance in the other country as he possesses in his own.

It is settled that the construction placed upon a treaty by the "political department" of the government is entitled to great weight. *Neilsen* v. *Johnson*, 279 U.S. 47, 52; *Charlton* v. *Kelly*, 229 U.S. 447, 468; *Factor* v. *Laubenheimer*, 290 U.S. 276, 294, 295. Moreover, "where a treaty fairly admits of two constructions, one restricting, the other enlarging, rights which may be claimed under it, the more liberal interpretation is to be preferred." *Bacardi Corp.* v. *Domenech*, 311 U.S. 150, 163; citing *Jordan* v. *Tashiro*, 278 U.S. 123, 127; *Neilsen* v. *Johnson, supra.*

2. The background of the Convention of 1881 reflects that the construction of the contracting parties, rather than that of the Oregon court, is correct. The "negotiations and diplomatic correspondence of the contracting parties relating to the subject matter" are, of course, relevant on the question of the meaning of a treaty. *Factor* v. *Laubenheimer*, 290 U.S.

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[2] Treaty of Friendship, Commerce, and Navigation, Between the United States And The Argentine Confederation of 1853, 10 Stat. 1005, 1009, I Malloy 20; Consular Convention With France of 1853, 10 Stat. 992, I Malloy 528; Convention With the Swiss Confederation of 1850, 11 Stat. 587, II Malloy 1763.

[3] Yugoslav-Polish Treaty, 30 League of Nations Treaty Series 455; Yugoslav-Czechoslovakia Treaty, 85 League of Nations Treaty Series 185.

276, 294-295; *Neilsen* v. *Johnson*, 279 U.S. 47, 52; *cf. In Re Ross*, 140 U.S. 453, 467.

a. The Serbian Convention was preceded by, *inter alia*, the Consular Convention with France of 1853, 10 Stat. 992, 996, I Malloy 528, 531, and the Treaty of Friendship, Commerce, and Navigation, Between the United States and the Argentine Confederation of 1853, 10 Stat. 1005, 1009; I Malloy 20, 23. These treaties, in common with the Convention of 1881, and other treaties,[4] dealt specifically with the matter of reciprocal rights of inheritance. Article VII of the French treaty granted "* * * the same rights within its territory in respect to real and personal property, and to inheritance, as are enjoyed there by its own citizens." And the Argentine treaty provides that the citizens of the contracting parties "shall reciprocally enjoy the same privileges, liberties, and rights as native citizens * * *."

The diplomatic correspondence in connection with the execution of these treaties reveals that the intent of the negotiators was to establish liberal reciprocal rights for the exchange of properties between the citizens of the United States and of foreign countries regardless of their residence. In fact, the French plenipotentiary addressed himself expressly to the situation of the naturalized American citizen of French

[4] See Convention with the Swiss Confederation of 1850, 11 Stat. 587, II Malloy 1763; Convention with Brunswick and Luneburg of 1854, 11 Stat. 601; Treaty of Amity, Commerce, and Consular Privileges between the United States and the Republic of Salvador, 1870, 18 Stat. 725, 730; Treaty of Friendship, Commerce and Navigation Between The United States of America and the Republic of Peru, 1870, 18 Stat. 698, 703.

birth who dies leaving heirs resident in Europe. He noted that, under the varying laws of the several jurisdictions in the United States, inheritance by the heirs would become "a source of difficulties." Note of the French Plenipotentiary of August 11, 1853, D.S., 16 Notes from the French Legation, 6 *Miller, Treaties and Other International Acts of the United States*, 192. And John S. Pendleton, who negotiated the Argentine treaty on behalf of the United States, was directed to acquire rights "upon the most extended principles of reciprocity". D.S., 15 Instructions, Argentina, 19-26, 6 *Miller, supra*, 210.[5]

b. There is nothing to indicate that the negotiators of the Serbian Convention had any different intent than the negotiators of the French and Argentine treaties. Specifically, there is no basis for an inference that the negotiators desired to restrict the rights of inheritance granted under the Convention to citizens of one country who were resident in the other.

The Serbian Convention was negotiated contemporaneously with a treaty with Rumania.[6] The correspondence on behalf of the United States was handled

[5] It is noted that A. Dudley Mann, in negotiating the Convention with the Swiss Confederation of 1850, stated that he was instructed to acquire commercial and property rights which "place us upon a basis that it [the Swiss Republic] places no other nation; to *assimilate our privileges*, in every sense but a political one, * * * *with those of native citizens* * * *." [Emphasis added.] Report on Negotiations dated November 30, 1850, printed as Senate Confidential Document No. 1, 31st Cong., 2d Sess., 5 *Miller, supra*, 861.

[6] The commercial treaty with Roumania was never ratified by Roumania, although it was ratified by the United States Senate. Regular Confidential Printed Documents before the Senate of the United States in Executive Session, Vol. 5 (44th to 47th Congress, March 9, 1875 to February 19, 1883, page 894 (1915)).

by the same individuals (John A. Kasson and Eugene Schuyler) and the relevant provisions of both treaties are *verbatim*. By Instruction No. 170 of the Department of State, dated May 4, 1880, Kasson was directed, in pertinent part, as follows:

> In view of the negotiations you are conducting with Roumania for the conclusion of proper treaty relations, it is desirable that you should at the earliest practicable moment familiarize yourself with the provisions of the Anglo-Roumanian Treaty, and that, in these negotiations, you should omit no precaution to secure for the benefit of American commerce all of the privileges which may be enjoyed by the most favored nation.

In accordance with this instruction, the American negotiators inserted into the treaty projet a provision, modelled after the corresponding provision of the Anglo-Roumanian treaty, which contained the phrases "citizens of the United States in Roumania" and "Roumanian subjects in the United States" in precisely the same context as those terms appear in the Serbian treaty, as well as the "most favored nation" clause. In Dispatch No. 29 of the Department of State, dated January 4, 1881, Schuyler (who had succeeded Kasson by this time) made reference to the amendment and pointed out that the subjects of other foreign nations enjoyed no greater inheritance rights than the subjects of Roumania and could scarcely ask for larger rights in Roumania than those possessed by Roumanian citizens. Schuyler obviously thought that the added language had the effect of granting the *same* rights to

the American citizen as possessed by Roumanians. Significantly, nowhere in any of the correspondence is there a suggestion that these rights would be conditioned upon the residence of the decedent.

3. The Supreme Court of Montana has, on two occasions, arrived at a conclusion opposite to that of the court below. *In re Spoya's Estate,* 129 Mont. 83, 282 P. 2d 452; *In re Ginn's Estate,* 347 P. 2d 467. In both cases the court expressly held that reciprocal rights of inheritance did exist between the United States and Yugoslavia as of 1949 and 1955, respectively.

Respondent points, however, to *In re Arbulich's Estate,* 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897, in which the Supreme Court of California held that the evidence before it was insufficient to show the existence of reciprocal rights of inheritance between the United States and Yugoslavia as of March 21, 1947. But the California court did not have before it either the construction given to the Convention of 1881 by the Department of State and Yugoslav Government or the similar treaties between the United States and other countries. Nor were the views of the contracting parties referred to in the petition for certiorari filed in this Court.

Clark v. *Allen,* 331 U.S. 503, heavily relied upon by the court below, is clearly distinguishable. There, this Court held that Article IV of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany of December 8, 1923, 44 Stat. 2132, did not entitle German nationals (resident in Ger-

many) to personalty located in the United States which had been left to them by the testamentary disposition of an American citizen. The terms of Article IV, however, are markedly different from those of the Convention of 1881. Article IV provides, in pertinent part, that "[n]ationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament * * *." Thus, as this Court noted (331 U.S. at 515), in the case of personalty, the German treaty governs only "the right of 'nationals' of either contracting party to dispose of their property within the territory of the 'other' contracting party; and it is 'such personal property' that the 'heirs, legatees and donees' are entitled to take." That the German treaty was intended to have a relatively restrictive application is also seen from the diplomatic correspondence pertaining to it. See, *e.g.*, letter from the Secretary of State to the German Ambassador (Wiedfeldt), dated July 25, 1923, II Foreign Relations of the United States (1923), p. 22.

4. The alternative holding of the court below that existing Yugoslav monetary controls would prevent an American citizen from obtaining the benefit of inherited property in Yugoslavia is also erroneous. Article 8 of the Yugoslav Laws Regulating Payment Transactions with Foreign countries, *infra*, p. 17, makes these monetary controls subject to all treaties between Yugoslavia and the United States. Moreover, Yugoslavia is a signatory to the Bretton Woods Agreement, *infra*, pp. 19-21, in which reciprocal rights for the interchange of funds is recognized. The Agreement clearly obligates the countries participating

to maintain only such controls as are permitted by its terms and within such limitations as are provided therein. There is nothing in the Agreement which would allow Yugoslavia to preclude the inheritance by an American citizen and resident of the estate of a Yugoslav.

The report of Senate Foreign Relations Committee on the Settlement of Pecuniary Claims Agreement of 1948, 62 Stat. 2658, notes that Article 5 of the Bretton Woods Agreement "obliges Yugoslavia to continue to grant most-favored-nation treatment to Americans in ownership and acquisition of assets in Yugoslavia. * * * [and further that] Yugoslavia is required, by Article 10, to authorize persons in Yugoslavia to pay debts to United States nationals, firms, or agencies, and, so far as feasible, to permit dollar transfers for such purposes." Senate Rep. No. 800, 81st Cong., 1st Sess., p. 4. And as evidenced by the recent correspondence between the Department of State and the Embassy of Yugoslavia, App. B, *infra*, pp. 22-42, the Yugoslav government similarly recognizes the binding effect of the Convention.

5. The questions are of recurring importance in the administration of commercial treaties with foreign countries. There are substantially identical statutes placing requirements upon the right of aliens to inherit in at least six other states.[7] In addition, four states impound the shares of decedent estates payable to nonresident aliens in the absence of a showing that the

[7] California Probate Code, Sec. 259; Iowa Code, Sec. 567.1; Louisiana Rev. Civ. Code, Art. 1490; Montana Rev. Code, Sec. 91-520; Nevada Rev. Stat., Sec. 134-230; Oklahoma Stat., Title 60, §121.

laws of such foreign countries meet the requirements of the respective state probate codes.[8]

Further, the United States has entered into numerous other treaties of commerce which contain provisions substantially the same as those of the Convention of 1881.[9] Thus, the construction placed upon the Convention of 1881 could have an effect upon the future interpretation of other treaties. In addition, if the decision of the court below is permitted to stand and the several states are permitted to disregard the interpretation given by the contracting parties to treaties of this kind, the foreign signatories will undoubtedly henceforth construe the treaties in a manner detrimental to the interests of American citizens.

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[8] New York Sur. Ct. Act, Sec. 269; Pennsylvania Stat., Tit. 20, Secs. 1156, 320.737; Ohio Rev. Code, Sec. 2113.81; Wisconsin Stat., Sec. 318-06(8).

[9] See *e.g.*, Consular Convention with France of 1853, *supra;* Treaty of Friendship, Commerce, and Navigation, between the United States and the Argentine Confederation of 1853, *supra;* Convention with the Swiss Confederation of 1850, *supra;* Convention with Brunswick and Luneburg, 11 Stat. 601; Treaty of Amity, Commerce, and Consular Privileges between the United States and the Republic of Salvador, 1870, 18 Stat. 725, 730; Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Peru, 1870, 18 Stat. 698, 703.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be granted.

J. LEE RANKIN,
Solicitor General.

GEORGE COCHRAN DOUB,
Assistant Attorney General.

ALAN S. ROSENTHAL,
Attorney.

SEPTEMBER 1960.

APPENDICES

Appendix A

Statutes and Treaties Involved

1. Section 111.070 of the Oregon Revised Statutes provides as follows:

> (1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:
>
> (a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;
>
> (b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and
>
> (c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.
>
> (2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.
>
> (3) If such reciprocal rights are not found to

exist and if no heir, devisee or legatee other than such alien is found eligible to take such property, the property shall be disposed of as escheated property.

2. Article 8 of the Yugoslav laws regulating payment transactions with foreign countries provides as follows (Law To Regulate Payments to and From Foreign Countries (Foreign Exchange Law) (Official Gazette of the Federal People's Republic of Yugoslavia, Friday, October 25, 1946, Belgrade, No. 86, Year II)):

Foreign exchange regulations are understood to include provisions of this Law; provisions of regulations for the implementation of this Law; orders, instructions and rulings of the Minister of Finance of the FPRY issued pursuant to this Law; all regulations for the control of imports and exports issued by the Minister of Foreign Trade of the FPRY; and all such provisions of agreements with foreign countries as relate to payments.

3. The relevant provisions of the Treaty Between the United States of America and Serbia, For Facilitating and Developing Commercial Relations of 1881, 22 Stat. 963, 2 Malloy, Treaties 1613, are as follows:

A Proclamation

Whereas, a Treaty between the United States of America and His Highness the Prince of Serbia, for facilitating and developing the commercial relations established between the two countries, was concluded and signed at Belgrade by their respective plenipotentiaries on the 2/14 day of October, 1881, the original of which treaty, being in the English and Serbian languages, is word for word as follows:

Treaty of Commerce Between the United States of America and Serbia.

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named * * * their respective plenipotentiaries * * *

* * * * *

Who * * * have agreed upon and concluded the following articles:

Article I.

There shall be reciprocally full and entire liberty of commerce and navigation between the citizens and subjects of the two high contracting powers, who shall be at liberty to establish themselves freely in each other's territory.

* * * * *

Article II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the right which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatsoever, without being subject to any taxes, imposts or charges

whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

4. The relevant provisions of the International Monetary Fund Agreement, 60 Stat. 1401, 1403, T.I.A.S. 1501, are as follows:

Article IV.

PAR VALUE OF CURRENCIES

Section 1. *Expression of par values.*

* * * * *

Section 2. *Gold purchases based on par values*

* * * * *

Section 3. *Foreign exchange dealings based on parity*

The maximum and the minimum rates for exchange transactions between the currencies of members taking place within their territories shall not differ from parity.

(i) in the case of spot exchange transactions, by more than one percent; and

(ii) in the case of other exchange transactions, by a margin which exceeds the margin for spot exchange transactions by more than the Fund considers reasonable.

Section 4. *Obligations regarding exchange stability*

(a) Each member undertakes to collaborate

with the Fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

(b) Each member undertakes, through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under Section 3 of this Article. * * *

* * * * *

Article VI.

Capital Transfers

Section 1. *Use of the Fund's resources for capital transfers*

(a) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund.

* * * * *

Section 2. *Special provisions for capital transfers*

* * * * *

Section 3. *Controls of capital transfers*

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers

of funds in settlement of commitments, except as provided in Article VII, Section 3(b), and in Article XIV, Section 2.

* * * * *

Article VIII.

General Obligations of Members

Section 1. *Introduction*

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2. *Avoidance of restrictions on current payments*

(a) Subject to the provisions of Article VII, Section 3(b), and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, co-operate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

APPENDIX B

DIPLOMATIC CORRESPONDENCE

From the Department of State to the Yugoslav Embassy, December 26, 1957:

The Department of State acknowledges receipt of Note No. 4693, dated November 4, 1957, from the Embassy of Yugoslavia, regarding difficulties currently being encountered in some States in the United States by citizens of Yugoslavia, heirs, next-of-kin, devisees and legatees of deceased residents of the United States, in being recognized as such in some States in the United States which require proof of reciprocity.

The Embassy states that citizens of the United States have full rights of inheritance to property in Yugoslavia, both real and personal, and that the Government of Yugoslavia is unaware of any instance in which an American citizen entitled to inherit property in Yugoslavia has been denied the right to such inheritance or has, upon application therefor, been denied the right to the transfer of his inheritance, or the proceeds of the sale thereof, to the United States in dollars. However, certain State authorities have indicated some doubt as to whether in practice such rights of inheritance have been recognized, and have rejected as inconclusive the tendered proof of numerous instances of the inheritance by American citizens of property in Yugoslavia.

The Embassy therefore asks to be advised if there has been brought to the attention of the Department of State any instance or alleged instance in which an American citizen entitled to the inheritance of property in Yugoslavia as heir, next-of-kin, devisee or legatee of a decedent has been denied the right to such inheritance or has, upon application therefor, been

denied the right to the transfer of his inheritance, or the proceeds of the sale thereof, to the United States in dollars.

The Department assumes that the Embassy's inquiry relates only to cases in which the claimant was an American citizen on the date of the death of the decedent.

The Department of State does not have complete and up-to-date information regarding all claims of American citizens to share in estates in Yugoslavia or the action taken by the appropriate Yugoslav authorities on every application by an American citizen to transfer the proceeds of his shares of an estate in dollars to the United States. Such matters are ordinarily handled in Yugoslavia, as in other countries, by the heir or devisee personally or by a legal representative acting on his behalf.

Numerous inquiries are, of course, addressed to the Department or to American diplomatic and consular officers stationed in the country in which the estate is being administered or in which the property is located requesting advice and assistance. The Department is normally informed of later developments in the case only when the American citizen concerned believes he is in danger of being denied the share of an estate alleged to be rightfully his, or when he believes he is encountering unwarranted difficulties or undue delay in effecting the transfer to the United States of the proceeds of his share of an estate.

In the light of the foregoing, the Embassy is informed that the Department has not been apprised of any instance where an American citizen has not been permitted to inherit or succeed by will or otherwise to property from an estate in Yugoslavia, or, after having duly made application therefor, has not been granted

permission to transfer his inheritance or the proceeds of the sale thereof to the United States in dollars.

Department of State, Washington.

December 26, 1957.

S/S CR.

From the Yugoslav Embassy to the Department of State, November 4, 1957:

No. 4693

The Embassy of Yugoslavia presents its compliments to the Department of State and has the honor to inform the Department that citizens of Yugoslavia, heirs, next-of-kin, devisees and legatees of deceased residents of the United States, continue in some States to meet with difficulties in being recognized as such. This appears to be due to the requirement of such States of proof of reciprocity in such matters. Although under the law of Yugoslavia, competent and conclusive evidence of which has been furnished to the appropriate executive and judicial authorities in such States, citizens of the United States have full rights of inheritance to property in Yugoslavia, both real and personal, by intestacy or as beneficiaries under a will, some doubt has been indicated by certain of such authorities as to whether in practice such rights have been recognized. In such circumstances, proof of numerous instances of the inheritance by American citizens of property in Yugoslavia and of the formal recognition thereof by the competent Yugoslav authorities, has been tendered to such authorities, but has been rejected as inconclusive. The Government of Yugoslavia is unaware of any instance in which an American citizen entitled to the inheritance of property in Yugoslavia as heir, next-of-kin, devisee or legatee of a decedent has been denied the right to such inheritance. Accord-

ingly, it will be appreciated if the Department of State would advise the Embassy whether or not any such instance, or alleged instance, has been brought to the Department's attention.

The Government of Yugoslavia has always recognized the right of an American citizen to have his funds derived from inheritance in Yugoslavia transferred to him in the United States in Dollars, the legal basis for this right having been stated in the Embassy's note No. 4135 dated March 27, 1957. The Government of Yugoslavia is also unaware of any instance in which an American citizen, an heir or an [sic] beneficiary of a decendent [sic] estate in Yugoslavia, has, upon application therefor, been denied the right to the transfer of his inheritance or the proceeds of the sale thereof, to the United States in Dollars. Since, however, some doubt has been expressed by certain authorities in some States as to whether the regulations, policy and procedures described in the Embassy's note under reference have been followed in practice, it would be appreciated if the Department would advise the Embassy whether or not there has been brought to the attention of the Department any instance or alleged instance in which an American beneficiary of a decendent [*sic*] estate in Yugoslavia has, upon application therefor, been denied the right to the transfer of his inheritance, or proceeds of the sale thereof, to the United States in Dollars.

If any report of any instance or alleged instance in either of the categories described above has come to the Department's attention, in order that the competent authorities in Yugoslavia may investigate the same and ascertain the facts, it is requested that the Embassy be informed to the fullest extent possible as to each such instance of all relevant particulars, including (1) the name and address of the American citizen involved, (2) the name and address, and the date and place of

death of the Yugoslav decendent [sic] whose estate was involved, (3) the Yugoslav court in which such estate was probated, and (4) in the case of instances in the latter category, the Yugoslav agency to which application for transfer is said to have been made, and when.

The Embassy avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration.

Washington, D. C., November 4th, 1957.
Department of State, Washington, D. C.

From the Secretary of State to the Yugoslav Embassy, April 24, 1958:

The Secretary of State presents his compliments to the Charge d'Affaires ad interim of the Federal People's Republic of Yugoslavia and acknowledges the receipt of the Embassy's note No. 4298 of April 18, 1958, regarding the interpretation of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation), concluded on October 2/14, 1881 between the United States of America and Serbia and presently in force between the United States of America and Yugoslavia. (22 Statutes at Large 963, Treaty Series 319.)

According to the Embassy's note, the Government of Yugoslavia considers that, by virtue of Article II of the 1881 Convention, citizens of the United States are entitled to most-favored-nation treatment with respect to the acquisition, possession, or disposition of property in Yugoslavia whether they reside in Yugoslavia or elsewhere and, in the case of inheritance, regardless of the decedent's nationality. With particular reference to inheritance, the Embassy states that,

in accordance with this construction of Article II of the 1881 Convention, United States citizens, regardless of their residence or of the decedent's nationality, are entitled to and do actually enjoy the same rights as Yugoslav nationals with respect to the inheritance of property in Yugoslavia. This, as the note points out, is in consequence of the fact that United States citizens, wherever resident, are accorded in Yugoslavia treatment no less favorable than that accorded in Yugoslavia to nationals of Poland under Article 23 of the Treaty Regarding Legal Relations concluded on May 4, 1923 between Yugoslavia and Poland, whereby Polish nationals, irrespective of their residence, are accorded national treatment (that is, the same treatment as Yugoslav nationals) in regard to the succession to and possession of property in Yugoslavia.

The Embassy's note cites Article IX of the Treaty of Friendship, Commerce and Navigation of July 27, 1853 between the United States of America and Argentina, which contains a national-treatment provision similar in substance to the provision in Article 23 of the 1923 treaty between Yugoslavia and Poland. The note indicates that, by the application of such provision together with the most-favored-nation provision in Article II of the 1881 Convention, Yugoslav nationals are entitled to and should be accorded, whether they reside in the United States or elsewhere and regardless of the decedent's nationality, the right to acquire, possess, or dispose of property in the United States.

The Embassy's note further states that the Yugoslav Government, pursuant to the third paragraph of Article II of the 1881 Convention, accords to American citizens, wherever they reside, the right to withdraw and have transferred to them moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The Embassy's note called attention to the agreement of July 19, 1948 between the United States of America and Yugoslavia regarding the settlement of pecuniary claims against Yugoslavia, and particularly to Article 5 of that agreement which has the effect of confirming that Article II of the 1881 Convention is interpreted as according rights in regard to property in one or the other of the two countries irrespective of the place of residence of the nationals concerned or of the decedent's nationality.

The Embassy's note inquired whether the United States Government concurs with the Yugoslav Government's interpretation of Article II of the 1881 Convention, particularly as applied to the rights of Yugoslav nationals who do not reside in the United States. It appears that the Embassy's inquiry is prompted by indications that some State attorneys general in the United States are tending toward the adoption of a contrary view. The note refers to a statement by the Supreme Court of California in the case of In re Arbulich's Estate, 41 Cal. 2d 86, 257 P. 2d 433, certiorari denied, 346 U.S. 897 (1953).

It is well to bear in mind a general principle applied in the United States, namely, that although an expression of opinion by the Department of State with respect to the interpretation of a treaty provision will normally be given considerable weight by the courts, such an expression of opinion is not binding on the courts.

The Department of State concurs in the Yugoslav interpretation of Article II of the 1881 Convention. That is to say, it is the opinion of the Department that Article II provides that whatever right is accorded in this country to nationals of any third country, wherever resident, with respect to the acquisition, possession, or disposition of property (including the rights of inheritance and transfer of proceeds thereof), shall be accorded likewise in this country to Yugoslav nationals

wherever resident and irrespective of the decedent's nationality. The Embassy's citation of the 1853 treaty between the United States of America and Argentina in connection with this matter appears to be appropriate.

Article II of the 1881 Convention is quoted in the Embassy's note, so it will not be set forth here. The critical words "citizens of the United States in Serbia and Serbian subjects in the United States shall enjoy [certain rights]" as they appear in the first paragraph of Article II may be given at least two plausible interpretations, namely: (1) The words "in Serbia" and "in the United States" may be deemed adjectival, modifying respectively "citizens of the United States" and "Serbian subjects". (2) The words "in Serbia" and "in the United States" may be deemed adverbial, modifying "shall enjoy". The first of these interpretations would limit the application of the article to the rights of nationals of the one country present in the other. However, a literal reading of the pertinent phraseology in context does not require such a restrictive interpretation. Rather, a liberal interpretation of the ambiguous portion produces a reasonable construction consonant with the spirit of the Treaty as a whole.

Under the first, or restrictive interpretation, an American citizen residing in Yugoslavia would be accorded under the most-favored-nation provision whatever rights in respect of the acquisition, possession, or disposition of property in Yugoslavia were accorded to nationals of a third country (for example, Poland under the 1923 treaty which the note cites) who were resident therein. However, American citizens outside Yugoslavia would not be accorded rights similar to rights under Yugoslav law enjoyed by Polish nationals who were not resident therein.

A review of the negotiating history of the 1881 Convention discloses nothing which supports the theory that the Governments of the United States and Serbia intended to provide that only some and not all of the nationals of the respective countries would be entitled to most-favored-nation treatment with respect to the acquisition, possession, and disposition of property. In this connection, it appears to have been the consistent policy of the United States, as reflected in treaties concluded between 1850 and 1890, to accord rights of inheritance and succession to property to nationals of the other contracting party without regard to their residence at the time of the decedent's death.

As stated in the preamble thereto, the 1881 Convention was entered into for the purpose of "facilitating and developing the commercial relations established between the two countries". The restrictive view would probably produce results inconsistent with this purpose. For example, a national of one country, also resident therein, wishing to make an *inter vivos* disposition of property belonging to him and located in the other country would have been required to make the long and then arduous trip to the other country to effect the disposition. It seems equally inconsistent with the expressed purpose of the Convention to make an alien's rights of inheritance turn on his location at the time of decedent's death.

Therefore, in the absence of clear and unmistakable evidence of a contrary intention on the part of the negotiators, it appears that the interpretation most consistent with the purpose of the Convention, and with the policy reflected in treaties between the United States of America and other countries, is to interpret the words "in Serbia" and "in the United States" as referring to the place where property rights are granted rather than to the geographical location of the person claiming such rights. As thus construed,

the provision would accord to nationals of either party *wherever resident* rights similar to those enjoyed by nationals of the most-favored-nation *wherever resident*. A review of all relevant correspondence available at the National Archives indicates no intention contrary to this interpretation. As the Supreme Court has said:

> "Treaties are to be construed in a broad and liberal spirit, and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. Hauenstein v. Lynham, 100 U.S. 483, 487; Geofroy v. Riggs, supra, 271; Tucker v. Alexandroff, 183 U.S. 424, 437." Asakura v. Seattle, 265 U.S. 332, 342 (1924).

This note, of course, is not to be considered as having the character of an international agreement or as effecting any modification of the treaty.

Department of State, Washington, April 24, 1958.
211.683/4-1858

From the Ambassador of Yugoslavia to the Secretary of State, April 18, 1958:

No. 4298

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and, in accordance with talks held between representatives of the Yugoslav Embassy and representatives of the Department of State, has the honor to inform the Honorable the Secretary of State that in the United States there have in the post-war period been various interpretations of Article II of the "Convention for Facilitating and Developing Commercial Relations" concluded between Serbia and the United States on October 2/14, 1881, (also com-

monly called the Convention of Commerce and Navigation of 1881, Treaty Series 319, 22 Stat. 936, 2 Malloy's Treaties, ect. [*sic*] 1613). The governments of the Federal People's Republic of Yugoslavia and of the United States of America recognize that this Convention has at all times been and is now in force between Yugoslavia and the United States. Article II of the Convention reads in the English text as follows:

> "In all that concerns the right of acquiring, or possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian Subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favoured nation."
>
> "Within these limits, and under the same conditions as the subjects of the most favoured nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favoured nation."
>
> "They shall likewise be at liberty to export freely the proceeds of the sale of their property and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favoured state."

In the period since 1945 there have been cases in which Article II of the Convention of Commerce and Navigation of 1881, when applied in the United States, was interpreted as if it did not sufficiently bear out

reciprocal rights of inheritance between the citizens of the Federal People's Republic of Yugoslavia and the citizens of the United States of America. According to the interpretations (particularly a statement by the Supreme Court of California in the case In re Arbulich Estate, 41 Cal. 2d 86, 257 P. 2d 433 and statements of some State attorneys general), the provisions of the Convention allegedly cannot be applied to those decedents' estates, the decedent of which is an American citizen who has left property in the United States to a Yugoslav citizen residing in Yugoslavia. According to such an interpretation, the acquisition of property by inheritance, pursuant to the provision of the most-favoured-nation clause in Article II of the Convention, encompasses only those citizens of Yugoslavia actually and physically living, sojourning or residing within the borders of the United States regardless of the decedent's citizenship. On the other hand, according to such an interpretation, the Yugoslav citizens permanently residing within the borders of Yugoslavia cannot inherit property left them by a resident of the United States, although the heirs are in most cases the closest relatives of the decedent's—his parents, spouse, children, brothers, sisters, etc. And vice versa, the corresponding should, then, apply as regards the inheritance rights of American citizens in Yugoslavia.

Such an interpretation, however, is directly contrary to the past and present interpretation of the Yugoslav courts and authorities, who always have been applying the provisions of Article II of the Convention so that by virtue thereof the American citizens are entitled to acquire property by inheritance, testamentary disposition or intestate succession, or by transfer, regardless of whether they are permanently residing in the United States of America, or anywhere else, as well as regardless of whether the decedent is a citizen of Yugoslavia,

the United States or any third country. This can be clearly deduced from many a decision of the Yugoslav courts, who have been applying and interpreting Article II of the Convention exclusively in the above sense.

In Article 23 of the Convention of Legal Relations between Yugoslavia and Poland, concluded on May 4, 1923, (85 League of Nations Treaty Series 455) the two contracting parties extended rights of inheritance to the nationals of the other as follows:

> "The nationals of either Contracting Party shall be allowed, on the same conditions as nationals of the country to succeed or to take possession of property passing to them in the territory of the other Contracting Party by operation of law or in virtue of testamentary disposition."

It is the construction of the Yugoslav Government that under the most-favoured-nation clause of Article II of the Convention of 1881 citizens of the United States regardless of their whereabouts or residence have had extended to them and are entitled to enjoy the same rights of inheritance from decedents' estates and of property located in Yugoslavia as nationals of Yugoslavia themselves, and regardless of whether the decedent was a citizen of Yugoslavia, the United States of America or any third country.

As regards the application of the most-favoured-nation clause to the rights of the Yugoslav citizens, regardless of their permanent residence, to acquire property and to inherit estates in the United States, it is clearly explained for example, by Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and Argentina, signed at San Jose on July 27, 1853 (10 Stat./Pt. 2, Public Treaties 16 Treaty Series 4, I Treaties /Malloy/ 20):

> "In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the

merchandise, goods and effects, and to the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights, as native citizens: and they shall not be charged, in any of those respects with any higher imposts or duties than those which are paid or may be paid, by native citizens, submitting, of course, to the local laws, and regulations of each country respectively. If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the Consul-General or Consul of the nation to which the deceased belonged, or the representative of such Consul-General or Consul, in the absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs."

This treaty unequivocally grants Argentine citizens the same rights of inheritance as native citizens in the United States, in the same manner as the right is granted to the Yugoslav citizens by the treaty between Poland and Yugoslavia. It will be observed that in substance the 1853 treaty with Argentina is very similar to the 1923 treaty between Poland and Yugoslavia.

It is further the construction of the Yugoslav Government that by virtue of the most-favored-nation clause and the trird [sic] subparagraph of Article II of the Convention of 1881, American citizens, wherever they may physically be or permanently reside, have and

must be accorded the right to withdraw and export, i.e. have transferred to them upon request to the United States or wherever they may direct, moneys due them by inheritance from decedents' estates located in Yugoslavia or moneys derived from the sale of inherited property in Yugoslavia.

The interpretation of the Yugoslav Government is also based on the spirit and intentions stated in the preamble to the Convention of Commerce and Navigation of 1881, as well as on the basis of the needs resulting from the relations which prevailed at that time between the two countries.

It is apparent, therefore, that the construction of the treaty adopted by the Supreme Court of California in In Re Arbulich Estate is not in accord with the understanding of the Yugoslav Government concerning the meaning and the effect of Article 11 of the Convention of 1881. This construction requires that there be twice read into the language the word "residing" or at least the word "sojourning" so the clause could read "citizens of the United States residing (or sojourning) in Serbia and Serbian citizens residing (or sojourning) in the United States". It requires no addition of words in the treaty to rephrase from Victorian into modern English what was beyond doubt the intention of the treaty-makers as to the persons to be covered by the treaty.

Article 5 of the "Agreement Between the Government of the United States of America and the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Citizens", concluded on July 19, 1948, (Treaty Series No. 1803, 72 Stat. 2133) provides as follows:

> "The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets

in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favourable than the rights and privileges accorded to nationals of Yugoslavia or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2/14, 1881."

It is evident that both Parties have confirmed thereby that Article II of the Convention of 1881 is to be interpreted to the effect that the citizens of one contracting party shall have the most-favoured-nation treatment when acquiring property in the territory of the other, regardless of the heir's residence or the decedent's citizenship. This joint interpretation (reached by both contracting parties) confirms the already reached concurrence on the existence of the rights of American citizens in Yugoslavia (and accordingly of the Yugoslav citizens in the United States of America) to acquire property (and accordingly to inherit) by virtue of Article II of the Convention of 1881, regardless of the heir's residence and the decedent's citizenship.

The Commission for Interpreting of Laws of the National Assembly of the Federal People's Republic of Yugoslavia issued on August 3, 1953, and the National Assembly subsequently confirmed, a binding interpretation, as follows:

"According to Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States of America and its Citizens, con-

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC and MILAN STOJIC, and also BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, *Petitioners*,

v.

STATE OF OREGON, acting by and through the State Land Board, *Respondent*.

LUTVO ZEKIC, IBRO ZEKIC, HABIBA TURKOVIC, DZEDJA POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC, MURTA BEKIC, MILKA ZEKIC, JASMINA ZEKIC and RAJKA ZEKIC, and BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, *Petitioners*,

v.

STATE OF OREGON, acting by and through the State Land Board, *Respondent*.

On Writ of Certiorari to the Supreme Court of the State of Oregon

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BRIEF FOR THE PETITIONERS

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

cluded on July 19, 1948, and the provisions of Article II of the Convention of Commerce and Navigation between Serbia and the United States of America, concluded on October 2/14, 1881, which is still in force, citizens of the United States of America are equal with citizens of the Federal People's Republic of Yugoslavia in regard to the manner and object of acquiring and disposing of both personal and real property. Accordingly, they have the right to inherit real property in the territory of the Federal People's Republic of Yugoslavia under the same conditions as citizens of the Federal People's Republic of Yugoslavia on the basis of the law, as well as on the basis of a Testament, regardless of the provision of Article 5, paragraph 1 of the Decree regarding the Control of Transfers of Real Property, of March 20, 1948."

In the note of the Secretariat of State for Foreign Affairs of Yugoslavia No. 515370/53 of October 21, 1953, to the American Embassy in Belgrade, in response to the American Embassy's note No. 1368 of May 21, 1953, unqualified assurances were given by the Yugoslav Government that it considers citizens of the United States, regardless of their whereabouts or residence, to have full reciprocal rights of inheritance in decedent's estates located in Yugoslavia on the basis of Article II of the Convention between Serbia and the United States of 1881, as confirmed by Article 5 of the Agreement on Pecuniary Claims of the United States and its Citizens, concluded on July 19, 1948.

The Attorneys General of both Oregon and California, which enacted the so-called reciprocal inheritance rights statutes in the years 1937 and 1941 respectively, issued opinions that reciprocal inheritance rights existed between Yugoslavia and the United States in the same manner required by their statutes by virtue

of Article II of the Convention between Serbia and the United States of 1881. The opinion of the Honorable I. H. Van Winkle, Attorney General of Oregon is in the 1938-1940 volume of the Opinions of the Attorneys General at page 136, that of the Honorable Earl Warren, Attorney General of California, is No. 1 NS 4451 dated July 15, 1942, from which the following is quoted:

> "Class 2. Where the same or reciprocal rights in the matter of acquiring and holding all kinds of property in any manner whatsoever are not granted to the citizens of the respective parties to the treaty in those specific words, but are in effect so granted by conferring such rights upon those citizens which the respective laws grant or shall grant in each of the states to the subjects of the most-favoured-nation, and under the same conditions as subjects of the most-favoured-nation."

> "In the class is Yugoslavia (the Treaty applying also to Serbia and the Kingdom of the Serbs, Croats and Slovenes) the citizens of which are entitled, by virtue of the reference provisions of such Treaty, to the same rights as those enjoyed by the citizens of Argentina."

In substantiation of the fact that Yugoslavia has always meticulously performed and carried out the obligations which, under its construction of the Convention, are due American citizens heirs or beneficiaries of estates and property in Yugoslavia, reference may be made to the Department's note of December 26, 1957, in response to this Embassy's note of November 4, 1957, No. 4693, wherein the Department stated:

> "In the light of the foregoing, the Embassy is informed that the Department has not been ap-

prised of any instance where an American citizen has not been permitted to inherit or succeed by will or otherwise to property from an estate in Yugoslavia, or, after having duly made application therefor, has not been granted permission to transfer his inheritance of the proceeds of sale thereof to the United States in dollars."

In view of the foregoing, the Government of the Federal People's Republic of Yugoslavia would appreciate being advised of the opinion of the Government of the United States on the following:

Whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention for Facilitating and Developing Commercial Relations of 1881 and Article 5 of the Agreement between the Government of the United States of America and the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States and its Citizens of 1948 to safeguard the inheritance rights of American Citizens and to ensure the transfer of the proceeds accruing thereof regardless of their permanent residence, encompassing therefore also those American citizens residing in the United States, and reversely, whether it concurs with the construction of the Yugoslav Government that it was the treaty-making intention of both contracting parties in negotiating and concluding Article II of the Convention of 1881 and Article 5 of the Agreement of 1948, to safeguard the inheritance rights of Yugoslav citizens and to ensure the transfer of the proceeds accruing thereof, regardless of their permanent residence, encompassing therefore also those residing in Yugoslavia?

The Yugoslav Ambassador avails himself of this op-

portunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.

Washington, D. C., April 18, 1958.

From the Ambassador of Yugoslavia to the Secretary of State, April 7, 1960:

No. 4306/60

The Ambassador of the Federal People's Republic of Yugoslavia presents his compliments to the Honorable the Secretary of State and has the honor to refer to their previous exchange of communications, No. 4298 of April 18, 1958, and No. 211.683/4-1858 of April 24, 1958, respectively, concerning the construction and meaning of Article II of the Convention of Commerce and Navigation concluded October 2/14, 1881, in force and effect between the United States and Yugoslavia. In consequence of the identity of the views expressed in such exchange of communications, the Ambassador considers it appropriate to draw the attention of the Secretary of State to the recent decision of the Supreme Court of the State of Oregon in the cases of *State Land Board* v. *Kolovrat* and *State Land Board* v. *Zekic,* 349 P.(2d) 255, rehearing denied March 2, 1960, wherein the provision of the Convention under reference was given a meaning and construction widely at variance with such views, and in express disregard thereof. The Court denied the right under such Convention of citizens and residents of Yugoslavia to inherit property in Oregon, and in the absence of other heirs, decreed such property to be escheated to the State.

In the circumstances, it is intended to apply as promptly as practicable, on behalf of the Yugoslav heirs, to the Supreme Court of the United States for a writ of certiorari to the Supreme Court of the State.

of Oregon, and the Secretary of State may wish to consider whether it would not be appropriate for the United States at the proper time to seek leave of the Supreme Court of the United States to file, as amicus curiae, a brief or other expression of its views, in support of such petition. The Government of Yugoslavia, no less than the Yugoslav heirs concerned, would welcome such action on the part of the United States because of the effect that the decision of the Supreme Court of the State of Oregon, if not reversed, may have on pending cases, and others that undoubtedly will arise in the future, not only in Oregon, but in other States, including, but not necessarily limited to, California, Montana, Arizona, Nevada, Iowa and Louisiana.

In view of the effect that the said decision may have on the mutual relations under the Convention of Commerce and Navigation of 1881 as well, the Yugoslav Ambassador would greatly appreciate it if the Honorable the Secretary of State would advise him of His views in the premises at His early convenience.

The Ambassador of the Federal People's Republic of Yugoslavia avails himself of this opportunity to renew to the Honorable the Secretary of State the assurances of his highest consideration.

Washington, D. C., April 7, 1960.

The Honorable, The Secretary of State, Washington, D. C.

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